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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,443	07/03/2003	Eric A. Goldfarb	020489-000120US	6557
76081	7590	12/29/2008	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW LLP/EVALVE INC. (020489) TWO EMBARCADERO CENTER 8TH FLOOR SAN FRANCISCO, CA 94111			RYCKMAN, MELISSA K	
			ART UNIT	PAPER NUMBER
			3773	
			MAIL DATE	DELIVERY MODE
			12/29/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/613,443	GOLDFARB ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	MELISSA RYCKMAN	3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 August 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 20 and 67-85 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 20,67-85 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/6/08 has been entered.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fastener being permanently implanted and removed from the catheter shaft must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20,37, and 72-85 are rejected under 35 U.S.C. 102(b) as being anticipated by Huebsch et al. (U.S. Patent No. 5,853,422).

Huebsh teaches a system for permanently implanting a fastener for reducing regurgitation of repairing a cardiac valve (Fig. 5B) in a patient's body, the valve having a plurality of movable leaflets, the leaflets having a superior surface on a first side and an inferior surface on an opposing side, the system comprising:

- a catheter shaft (shaft along middle of Fig. 21) having a proximal end and a distal end
- a permanently implantable fastener (10, Figs. 2-4) removably connected to the catheter shaft and including a pair of articulating arms (arms between 14 and 18, element 22) coupled together and forming an angle

therebetween, the articulating arms movable from an open position (Fig. 3) in which portions of the articulating arms are spaced apart with a first angle therebetween, to a closed position (Fig. 4) in which the portions of the articulating arms are closer together with a second angle therebetween less than the first angle, and to positions between the open position and the closed position, the pair of articulating arms being configured to engage the inferior surfaces of the leaflets

- a control mechanism (240, portion on central shaft in Fig. 21) operatively coupled to the articulating arms and adapted to open and close the pair of articulating arms (Fig. 22), wherein the pair of articulating arms can be closed thereby reducing the angle therebetween, to engage the leaflets and thereafter be opened to allow release of the leaflets
- a central member (18) coupled to the pair of articulating arms (22) and removably coupled to the catheter shaft (Fig. 21 and 22, removed from center shaft) near the distal end, the catheter shaft adapted for delivering the pair of articulating arms into a heart and detaching from the central member once the articulating arms are engaged with the leaflets (Fig. 25), the central member and articulating arms being left in the patient's body while maintaining the leaflets in the coapted configuration after the catheter shaft has been removed from the patient's body (Fig. 25)
- a pair of superior elements (element 22 between 18 and 16, Fig. 3) movably coupled to the central member, the superior elements being

configured to engage the superior surfaces of the leaflets (Fig. 25), the superior elements cooperating with the articulating arms to capture and pinch the valve leaflets

- the central member (18, Fig. 25) is configured to be positioned through the valve between the leaflets
- the superior elements (22 between 16 and 18) are coupled to a conduit (232) slidably coupled to the central member
- the pair of articulating arms have engaging surfaces for engaging the surfaces of the leaflets, the engaging surfaces have a texture or teeth for enhancing friction (col. 4, ll. 3-9)
- the pair of articulating arms (22) and central member are slidably positionable through an endovascular sheath (40)
- the control mechanism is adapted to (capable of engaging only one of 22 and not all of 22) open and close each articulating arm of the pair of articulating arms independently

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR  
/Melissa Ryckman/  
Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773